

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY DEWAYNE LEE TURNER,
Petitioner,
v.
PEOPLE OF THE STATE OF CALIF.,
Respondent.

No. 2:20-cv-1370 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985).

After reviewing the petition for habeas corpus, the court finds that petitioner has failed to exhaust state court remedies. Petitioner concedes that his claims have not been presented to the

1 California Supreme Court. (See ECF No. 1 at 6.) Further, there is no allegation that state court
2 remedies are no longer available to petitioner. Accordingly, the petition should be dismissed
3 without prejudice.¹

4 Good cause appearing, IT IS HEREBY ORDERED that:

5 1. Petitioner's request to proceed in forma pauperis (ECF No. 5) is granted;

6 2. The Clerk of the Court is directed to serve a copy of these findings and
7 recommendations together with a copy of the petition filed in the instant case on the Attorney
8 General of the State of California; and

9 3. The Clerk of the Court shall randomly assign a district judge to this case.

10 Further, IT IS HEREBY RECOMMENDED that petitioner's application for a writ of
11 habeas corpus be dismissed without prejudice for failure to exhaust state remedies.

12 These findings and recommendations will be submitted to the United States District Judge
13 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
14 being served with these findings and recommendations, petitioner may file written objections
15 with the court. The document should be captioned "Objections to Findings and
16 Recommendations." Petitioner is advised that failure to file objections within the specified
17 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
18 (9th Cir. 1991).

19 Dated: August 11, 2020

20
21 
22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE

24 DLB:9/DB/prisoner-habeas/turn1370.scrn fr

25 ¹ Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period
27 will start to run on the date on which the state court judgment became final by the conclusion of
28 direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. 28 U.S.C. § 2244(d).